

This section has no application to depositions taken without notice, and filed after the evidence has been taken, and after a decree for an account and an account taken. *Stockett v. Jones*, 10 G. & J. 279.

Generally.

This section is not in conflict with any provision of the federal constitution or of any law of congress passed in pursuance thereof. This section relates to a matter of state practice alone, and its construction rests with the state courts. *Loeber v. Schroeder*, 149 U. S. 580.

This section will not be construed so as to permit parol evidence, not excepted to below, to make or revoke a will, particularly in the light of article 93, sections 323 and 324. *Lowe v. Whitridge*, 105 Md. 184.

Where the plaintiff fails to make out a case both in his bill and on the proof, the case will not be affirmed, though no exceptions were filed below. *Evans v. Iglehart*, 6 G. & J. 199.

This section requires the court of appeals to decide upon the evidence in the record without reference to the allegations of the bill—whether a variance exists or not, is immaterial unless exceptions are filed. *Reed v. Reed*, 109 Md. 695; *Shugers v. Shugers*, 105 Md. 344; *Gerting v. Wells*, 103 Md. 637; *Schroeder v. Loeber*, 75 Md. 202. And see *Loeber v. Schroeder*, 76 Md. 349.

Whatever may be the proof, if the allegations of the bill are insufficient and properly excepted to, no decree can be entered. *Berry v. Pierson*, 1 Gill, 247.

If no exceptions are filed to inadmissible evidence, it is in the case for all purposes. *Sentman v. Gamble*, 69 Md. 304.

If the record does not show that exceptions were filed to inadmissible evidence, the court of appeals will not reverse. *Mondell v. Shafer*, 49 Md. 492; *Keene v. Van Reuth*, 48 Md. 193.

Where the objection of multifariousness is not raised below, it will not be entertained in the appellate court. *Ashton v. Ashton*, 35 Md. 504.

This section applies where original papers are lost and copies substituted by the court, and the defendant answers without raising any question as to the sufficiency of such copies. *McKaig v. Hebb*, 42 Md. 231.

Exceptions to an auditor's report filed before its final ratification ought to be considered, though not filed within the time limited by the order *nisi*. *Calvert v. Carter*, 18 Md. 75.

This section applied. *Engler v. Garrett*, 100 Md. 395 (testimony); *Cherbonnier v. Goodwin*, 79 Md. 61 (order for rehearing); *Loeber v. Schroeder*, 76 Md. 347 (testimony); *Baltimore, etc., R. R. Co. v. Pumphrey*, 74 Md. 113 (averments); *Citizens, etc., Co. v. Wilson*, 50 Md. 90 (auditor's account); *Ashton v. Ashton*, 35 Md. 503 (averments, evidence and auditor's report); *Andrews v. Poe*, 30 Md. 486 (evidence); *Windwart v. Allen*, 13 Md. 200 (evidence); *Cherry v. Stein*, 11 Md. 19 (evidence); *General Ins. Co. v. United States Ins. Co.*, 10 Md. 529 (auditor's account); *Long v. Long*, 9 Md. 356 (evidence); *Gibbs v. Gale*, 7 Md. 87 (evidence); *Trump v. Baltzell*, 3 Md. 304 (evidence); *Eyler v. Crabbs*, 2 Md. 154 (averments); *Thomas v. Doub*, 1 Md. 327 (averments); *Oliver v. Palmer*, 11 G. & J. 37 (auditor's account); *Harwood v. Jones*, 10 G. & J. 414 (evidence); *Fitzhugh v. McPherson*, 9 G. & J. 69 (evidence); *Key v. Knott*, 9 G. & J. 361 (evidence); *Clagett v. Hall*, 9 G. & J. 58 (evidence); *Calwell v. Boyer*, 8 G. & J. 147 (competency); *Miller v. Allison*, 8 G. & J. 37 (auditor's account); *Berret v. Oliver*, 7 G. & J. 202 (evidence); *Cross v. Cohen*, 3 Gill, 269 (competency).

For other examples of the application of this section, see *Sentman v. Gamble*, 69 Md. 304.

Quare, whether this section would permit the court of appeals to determine a question of *res adjudicata*, although it was not raised below. *Felgner v. Slingluff*, 109 Md. 485.

Cited but not construed in *Hitch v. Davis*, 3 Md. Ch. 275.

As to appeals from courts of law, see sec. 9, and notes.

1904, art. 5, sec. 37. 1888, art. 5, sec. 35. 1860, art. 5, sec. 27. 1841, ch. 163.

37. No defendant to a suit in equity in which an appeal may be taken shall make any objections to the jurisdiction of the court below.